

THE HONORABLE BENJAMIN SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	No. CR20-5271 BHS
)	
Plaintiff,)	DEFENDANT'S SENTENCING
)	MEMORANDUM
v.)	
)	
MATHIAS KANE,)	
)	
Defendant.)	

Mathias Douglas Kane, by and through his attorneys Nicholas Vitek and Joshua Saunders, hereby files this memorandum in aid of sentencing. Mr. Kane requests that this Court accept and impose the 11(c)(1)(C) plea and sentence Mr. Kane to time served. As discussed below, Mr. Kane is a non-violent offender who was experiencing incredible stress and lack of support during an ongoing family law dispute and took to the internet to express his frustration in an inappropriate manner. This caused Mr. Kane to be detained for more than a year, experience pretrial conditions more like those at a United States Penitentiary, be exposed to COVID-19 during his pretrial custody, lose custody of his daughter, and incur tens of thousands of dollars of damage to his house while in custody. For those reasons, as further detailed below, Mr. Kane requests that the

SENTENCING MEMORANDUM

(United States v. Kane, No 20-05271) - 1

VITEK LAW LLC
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
(206) 673-2800

1 Court impose a term of supervised release of six months or less without any special
2 conditions, and not impose any fine.¹

3
4 ***I. Mr. Kane's Actions Reflected His Concern for His Daughter, not Hatred or
Bigotry***

5 ***a. Mr. Kane's life has been marked by familial instability***

6 Mathias Kane was born in Torrance, California, to Wayne and Linda Kane. Both
7 of his parents were addicted to heroin. PSI ¶ 45. When he was an infant, they gave him
8 and his twin brother up to be raised by his grandparents. Id. at 46. The family moved to
9 Oklahoma when Mr. Kane was three. Id. His grandfather, a plumber, built the family a
10 house. One year later, the house was destroyed by a tornado, and the family moved to
11 Cowlitz County in Washington. Id.

12
13 Mr. Kane's father would visit the family occasionally, telling the boys that he was
14 their uncle. Id. at 47. He took the boys camping but would also steal from their
15 grandfather. Mr. Kane learned that his "uncle" was his father at age eight or nine. Id. In
16 1982, when he was ten, his grandparents divorced acrimoniously. Id. His grandmother
17 died two years later. His grandfather died in a traumatic hospital event in 1996. Both of
18 his parents later committed suicide. Id. at 53.

19
20
21
22
23 ¹ Although the United States and Mr. Kane reached an agreement only on the terms of imprisonment, the plea
24 agreement recognized that the **Court** was free to impose a fine or conditions of supervised release. In plea
25 negotiations with the United States, there was no discussion of a fine, and the United States specifically opposed
26 the special conditions for his release they now advocate in their sentencing memorandum. See e.g., United States v. Franco-Lopez, 312 F.3d 984, 989 (9th Cir. 2002) (In construing a plea agreement drafted by the government, the Court must determine what the defendant "reasonably believed to be the terms of the plea agreement at the time of the plea."); Santobello v. New York, 404 U.S. 257, 260 (1971) ("when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.") (emphasis added).

1 Mr. Kane went on to have four children of his own with three different women.
2 He does not have a strong relationship with the two oldest, but his relationship with his
3 daughter RK (now age 14) is very strong. His youngest child is age 4. He served as an
4 active parent in her life until his incarceration and subsequent separation from her mother,
5 Brittany Harvey.
6

7 **b. Mr. Kane's Relationship With His Daughter, RK, Is The Only**
8 **Meaningful Family That Mr. Kane Has.**

9 Mr. Kane has been the sole caretaker for RK since she was two years old. Her
10 mother, Shanna Erickson, was addicted to heroin and methamphetamine. She was unable
11 to care for RK but would show up at Mr. Kane's house in the middle of the night, high
12 and demanding to see her daughter. This was traumatic for Mr. Kane and RK, but he did
13 his best to shield his daughter from the consequences of her mother's addiction.
14 Ultimately both parents were both required to take drug tests by a family court. Mr.
15 Kane's was clean, while Ms. Erickson tested positive for multiple drugs. He was awarded
16 sole custody.
17

18 For years, Mr. Kane alone was responsible for RK's welfare. He fed her, bathed
19 her, and clothed her. He was the person who potty trained her as a toddler. He took her
20 to medical appointments and paid for her preschool. He took her to swimming lessons,
21 to the park, and out to restaurants. Father and daughter have been on many vacations
22 together—twice to Disneyworld, to Discovery Cove to swim with dolphins, to
23 Yellowstone, to Sea World, and many others.
24
25
26



So often deprived of meaningful family connections himself, Mr. Kane created a bond with his daughter RK unlike any that he had had as a child.

c. Mr. Kane's Actions In This Case Are The Regrettable Actions Of A Concerned And Angry Father.

Mr. Kane regrets the statements that he made in this case about BS. He has had fourteen months in custody to reflect on the events that led to his detention, and he wants the Court to understand that his statements came from a place of frustration and fear, not hatred or bigotry.

RK's departure from his home stemmed from disputes between her and Mr. Kane's then-girlfriend, Brittany Harvey. Ms. Harvey had used corporal punishment on RK, which led to CPS involvement with the family. RK went to school and told BS's daughter, a friend of hers, about the discipline. A no-contact order against Brittany was issued by the family court, which led to Mr. Kane having RK stay with her maternal grandmother. RK then left her grandmother's house and began living with BS.² Mr. Kane was unaware of the change and so was shocked when he received a call from RK's grandmother informing him that RK was living with BS.

Mr. Kane began to hear things, from RK's grandmother and other sources, about RK's welfare that deeply concerned him. He heard that RK was suicidal and was committing self-harm by cutting herself. Because RK was in the care of BS, Mr. Kane held BS responsible for the decline in RK's mental health and then took steps to try and have RK returned to him.

In early January 2020, Mr. Kane went to the La Center Police Department to

² Mr. Kane has a young daughter with Ms. Harvey. By having a no-contact order, Mr. Kane was faced with the choice of having forcing his young daughter and mother of his child leave the house, or place RK temporarily with her grandmother.

1 report his concerns to law enforcement. See La Center Police Reports at Kane_00000006-
2 8. The police report states that Mr. Kane reported the “Father of 13-year-old daughter is
3 reporting she is in danger where she currently resides”. The report states that the police
4 concluded that RK was “in good care.” However, soon after, RK was sent to a hospital
5 in Oregon. BS provided written consent for “her” child to receive care. Kane_000009-
6 11. However, to Mr. Kane’s perspective, BS was not the parent of RK and thus had no
7 authority to send her to a hospital. Rather, Mr. Kane believed that RK should return home
8 and stay with him, where none of these issues of mental health that RK was exhibiting
9 had ever been exhibited before. As such, Mr. Kane reached out to the Oregon State Police
10 regarding RK’s transfer to the hospital in Oregon. See Oregon State Police Report at
11 Kane_00000464-471 (stating that a “Washington resident advised his daughter was taken
12 from state and admitted into [] hospital in Portland without his knowledge and against
13 his wishes.”). However, Mr. Kane received no help.

14
15
16
17 At the hospital in Oregon, Mr. Kane was permitted to have supervised phone calls
18 with her from the CPS office and she told him that she just wanted to come home. She
19 begged him to come get her and explained that she was self-harming because she wanted
20 to come home.
21
22
23
24
25
26



Picture of RK's arm showing injuries she inflicted on herself.

Mr. Kane was beside himself with worry over the harm that RK was causing herself, and expressed himself in a manner that may have been counterproductive. As such, although Mr. Kane made repeated requests to law enforcement for assistance, including multiple attempts with the local La Center Police Department as well as a phone call to the FBI in February 2020, Mr. Kane was unable to obtain any assistance in having RK returned.

Feeling powerless, Mr. Kane expressed his anger about the situation on an online forum in January 2020. To Mr. Kane, he was merely exercising his First Amendment right to vent about and express his anger and rage about the powerlessness and impotency he felt. Mr. Kane had failed to protect his daughter, and for that, he lashed out to those he felt were responsible for that failure, including BS. Unlike in the real world, online Mr. Kane could be powerful – he could express himself and others on the forum would express support for his situation. Unfortunately, this caused Mr. Kane to become more

1 free in what he said online and his verbiage to become more drastic. However, it is
2 important to understand from Mr. Kane's perspective, this was all expression. Mr. Kane
3 is disabled and has, other than a fight with brother a decade earlier, no violence in his
4 background. The idea that anyone would take his comments as serious expressions of
5 anything other than venting anger and frustration was not what he intended.
6

7 In fact, once approached by law enforcement about his online statements, Mr.
8 Kane immediately stopped posting anything else about BS. The police searched his home
9 and found no weapons. In short, the eventual investigation demonstrated that Mr. Kane
10 was making statements online that he had no intention or capacity to fulfil. He regrets
11 those statements and did not intend to cause fear to BS or anyone else. But Mr. Kane
12 hopes that the Court will understand his statements to be what they were—angry pleas of
13 a deeply concerned father.
14
15

16
17 **II. Mr. Kane Has Already Been Punished Enough To Be Deterred From
Future Misconduct**

18
19 **a. The parties agree that a sentence of “time served” is appropriate**

20 The defense agrees with the United States and the Department of Probation that
21 Mr. Kane's offense level is 12. We agree that Mr. Kane's Criminal History Category is
22 II and that the advisory Sentencing Guidelines range is 12-18 months. Mr. Kane has
23 already served 14 months at the FDC. As such, a 14-month sentence is effectively at the
24 high end of the applicable Sentencing Guidelines range when factoring in credit for good
25 time and release to a halfway house.
26

b. This Court Should Impose Term Of Supervised Release Of Six Months Or Less.

This Court should impose a six-month or less term of supervised release because a longer term is not necessary under 18 U.S.C. § 3553(a). This is because, in part, Mr. Kane has served an above-guideline sentence in some of harshest pretrial conditions that exist for federal crimes. In recognition of this difficult sentence, this Court should find that Mr. Kane's term of imprisonment that he has already served all the sentencing requirements of 18 U.S.C. § 3553(a). It is important to note that Mr. Kane has been on pretrial release since his plea, with minimal restrictions, and has had no issues. Thus, there is nothing to indicate that Mr. Kane would benefit from continued supervision. Additionally, because Mr. Kane desires to avoid opiates to control back pain that he suffers as a result of his disability, a term of supervised release would prohibit him from using non-opiate pain relief because the Federal government continues to criminalize the use of marijuana.

In Mr. Kane's plea agreement, the parties agreed that the Court *could* impose a term of supervised release of up to two years. Likewise, 18 U.S.C. § 3583 states that a court "*may* include as part of the sentence a requirement that the defendant be placed on a term of supervised release[.]" (emphasis added). In determining whether a term of supervised release is appropriate, the Court should use most of the same sentencing factors in determining a sentence. Id. subsection (c); see also 18 U.S.C. § 3553(a). Thus, in determining whether to impose a term of supervised release, the Court should consider the nature and circumstances of the offense and the defendant (18 U.S.C. § 3553(a)(1)),

1 the need to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B)),
 2 to protect the public from further crimes from the defendant (18 U.S.C. § 3553(a)(2)(C)),
 3 the need for training and education (18 U.S.C. § 3553(a)(2)(D)), the recommendation of
 4 the guidelines (18 U.S.C. § 3553(a)(4); (a)(5)), the need for unwarranted disparities (18
 5 U.S.C. § 3553(a)(6)), and the need to impose restitution (18 U.S.C. § 3553(a)(7)).
 6

7 The characteristics of the offense and Mr. Kane do not support the imposition of
 8 a term of supervised release longer than six months. As detailed above, Mr. Kane's role
 9 in the offense was that of a father concerned for his daughter – he was not trying to cause
 10 direct harm to BS or others and he believed that his daughter was in danger and that he
 11 was unable to help her. These are not actions that create a need for supervised release. In
 12 fact, the record shows that Mr. Kane made multiple attempts to contact and work with
 13 law enforcement agencies – certainly not the type of actions that would warrant the need
 14 for continued supervision.
 15

16 Because Mr. Kane has already served an above-guideline sentence while in harsh
 17 conditions, a term of supervised release longer than six months is not necessary to deter
 18 future criminal conduct. Mr. Kane has spent fourteen months in pretrial custody. If Mr.
 19 Kane were sentenced to prison without any pretrial detention, he would have served that
 20 sentence at a minimum-security camp. See generally, Inmate Security Designation and
 21 Custody Classification Manual, P5100.08. Minimum security camps have limited
 22 security, access to programing, and visits with family. Instead, Mr. Kane served fourteen
 23 months at the FDC during a pandemic. The immediate result of this is that Mr. Kane was
 24
 25
 26

1 locked into his cell, with limited access to showers, recreation time or visits from family.
2 As such, the time that Mr. Kane served is more akin to serving time as a United States
3 Penitentiary than a minimum-security camp. During his incarceration, his parental rights
4 with RK were terminated when he was forced to miss a family hearing because the FDC
5 refused to transport him to the hearing.³ Thus, the term of imprisonment that Mr. Kane
6 has served is a sentence that has already afforded deterrence and thus there is no need for
7 an additional deterrence through the imposition of a longer term of supervised release.
8

9 Likewise, when Mr. Kane was contacted by law enforcement about his online
10 posts, he immediately stopped making additional posts. Such actions demonstrate that
11 once the gravity of his actions became apparent to him, he stopped. Thus, a term of
12 supervised release is unnecessary to protect the public. Mr. Kane has no desire to have
13 any contact with BS, and in fact, plans to sell his house and begin living in a new part of
14 the country to put this event in the past. Undersigned counsel believes that there is an
15 existing no-contact order with BS, and thus a term of supervised release is unnecessary
16 to provide any protections to BS. Likewise, BS is not seeking restitution, thus, there is
17 no need to impose supervised release to support any restitution payment schedule.
18
19

20 Rather, a lengthy term of supervised release will cause Mr. Kane difficulty. As the
21 Presentence Report details, Mr. Kane suffered a workplace back injury in 2009. PSI ¶ 51.
22 Originally, Mr. Kane was placed on Oxycodone for his related back pain. Id. ¶ 58. As the
23
24

25 ³ Mr. Kane is in the process of restoring his parental rights with RK and has had been able to spend time with her
26 since his release.

1 Court is aware, the dangers of opiates and the risk for addiction is extremely high.
 2 Because of this, Mr. Kane did not want to use opiates to help continue to control his back
 3 pain, and instead began using medical marijuana. PSI ¶ 62. However, the United States
 4 still criminalizes the use of marijuana and does not recognize that marijuana has any
 5 medical validity. Thus, according to United States policy, the only acceptable drug to
 6 help control his pain are opiates – a drug that has caused the death of thousands and the
 7 addiction of millions. Nevertheless, if the Court were to impose a term of supervised
 8 release and he were to use marijuana to help control his back pain, the United States could
 9 seek his re-incarceration for no other reason than the use of a drug used by millions
 10 without issue. Thus, a term of supervised release will put Mr. Kane in the difficult
 11 position of having to choose between a drug unrecognized by the Federal government as
 12 helpful for managing his pain, and one that is recognized by the government but is highly
 13 addictive and potentially life-altering.
 14
 15

16 As such, for these reasons, Mr. Kane requests that this Court impose a term of
 17 supervised release of six months or less.
 18

19 **c. If The Court Imposes A Term Of Supervised Release, It Should Limit**
 20 **The Special Conditions**

21 However, if a term of supervised release is imposed, this Court should not
 22 impose any of the special conditions proposed. First, it is important to emphasize that
 23 Mr. Kane was released on only the standard conditions and has had no issues with those
 24 conditions. Thus, there is nothing in Mr. Kane's specific conduct since his release that
 25 would warrant the imposition of any special conditions.
 26

1 If the Court imposes supervised release and an issue arises where a special
2 condition is warranted, probation should seek the court's approval then. Additionally,
3 although Mr. Kane was aware that the Court *could* impose special conditions related to
4 his supervised release, the Government's advocacy for these conditions is outside the
5 terms for the agreement. Although Mr. Kane is eager to end this case and move on with
6 his life, the imposition of conditions that are now being advocated places Mr. Kane in a
7 difficult spot.
8

9 **d. A Fine Is Unwarranted**

10 Mr. Kane is clearly incapable of paying a fine. Mr. Kane's only income is
11 derived from his disability pension, comprising a positive cash flow of only a few
12 hundred dollars a month. PSI ¶ 71. Importantly, this is not a crime of financial gain
13 where Mr. Kane's ill-gotten gains must be recouped. Rather, a fine can only be viewed
14 as a punishment. However, as discussed above, Mr. Kane has already been sufficiently
15 punished for his conduct. He has served an above-guideline sentence in conditions that
16 are far more server than he would if he served his sentence after conviction. Thus, to
17 impose a fine would be unfair and unjust.
18

19 Likewise, the statement of financial resources that Mr. Kane provided to probation
20 for the Presentence Report fails to include all the costs that have been incurred while he
21 was incarcerated. Upon his release, Mr. Kane discovered that his then-girlfriend and her
22 mother have stolen more than \$7,000 from him. See Report to La Center Police, dated
23 May 17, 2021. Mr. Kane had authorized the occupants of the house to make payments
24
25
26

1 necessary to the mortgage as well as for electricity and water usage. However, bank
2 statement records show thousands of dollars made for cash withdrawals, trips to Walmart,
3 PayPal transfers, as well as purchases for restaurants and other personal expenditures that
4 far exceed what was necessary to keep Mr. Kane's property up-to-date. For example, in
5 one 60-day period, close to two thousand dollars in cash withdrawals were made against
6 Mr. Kane's bank account. Id.

8 As such, the amount of money that Mr. Kane would have to spend on a fine is
9 substantially less than what he first reported to probation, since the extent of the theft
10 was unknown to Mr. Kane at the time of his probation interview. Because Mr. Kane did
11 not financially benefit from this offense, lives off a fixed income, and has lost
12 thousands of dollars in connection with his incarceration, a fine is unwarranted.

15 CONCLUSION

17 For all the above reasons, Mr. Kane requests that this Court accept the plea
18 agreement, impose a sentence of time-served, issue a term of supervised release of six
19 months or less, not add any special conditions, and not impose a fine.

21 Respectfully submitted this 21st day of July 2021.

24 /s/ Nicholas Vitek
Nicholas J. Vitek
Attorney for the Defendant
Vitek Law LLC

1 1700 Seventh Ave, Suite 2100
2 Seattle, WA 98101
3 Tel: 206.673.2800
4 Fax: 206.408.6823
5 vitek@vitekllaw.com

6 /s/ Joshua Saunders
7 Joshua R. Saunders
8 Attorney for the Defendant
9 Law Office of Joshua R. Saunders PLLC
10 533 Martin Luther King Jr Way S
11 Seattle, WA 98144
12 Tel: 253-245-3553
13 jrsaunderslaw@gmail.com
14
15
16
17
18
19
20
21
22
23
24
25
26

Certificate of Service

I hereby certify that on July 21st, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants.

s/ Nicholas Vitek
Nicholas J. Vitek
Attorney for the Defendant
Vitek Law LLC
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
Tel: 206.673.2800
Fax: 206.408.6823
vitek@viteklaw.com